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I

110TH CONGRESS  
2D SESSION

# H. R. 5268

To provide for a temporary increase of the Federal medical assistance percentage under the Medicaid Program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2008

Mr. PALLONE (for himself, Mr. KING of New York, Mr. DINGELL, and Mr. REYNOLDS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To provide for a temporary increase of the Federal medical assistance percentage under the Medicaid Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TEMPORARY INCREASE OF MEDICAID FMAP.**

4 (a) PERMITTING MAINTENANCE OF FISCAL YEAR  
5 2007 FMAP FOR LAST 2 CALENDAR QUARTERS OF FIS-  
6 CAL YEAR 2008.—Subject to subsection (e), if the FMAP  
7 determined without regard to this section for a State for  
8 fiscal year 2008 is less than the FMAP as so determined  
9 for fiscal year 2007, the FMAP for the State for fiscal

1 year 2007 shall be substituted for the State's FMAP for  
2 the third and fourth calendar quarters of fiscal year 2008,  
3 before the application of this section.

4 (b) PERMITTING MAINTENANCE OF FISCAL YEAR  
5 2008 FMAP FOR FIRST 3 QUARTERS OF FISCAL YEAR  
6 2009.—Subject to subsection (e), if the FMAP determined  
7 without regard to this section for a State for fiscal year  
8 2009 is less than the FMAP as so determined for fiscal  
9 year 2008, the FMAP for the State for fiscal year 2008  
10 shall be substituted for the State's FMAP for the first,  
11 second, and third calendar quarters of fiscal year 2009,  
12 before the application of this section.

13 (c) GENERAL 2.95 PERCENTAGE POINTS INCREASE  
14 FOR LAST 2 CALENDAR QUARTERS OF FISCAL YEAR 2008  
15 AND FIRST 3 CALENDAR QUARTERS OF FISCAL YEAR  
16 2009.—Subject to subsections (e), (f), and (g), for each  
17 State for the third and fourth calendar quarters of fiscal  
18 year 2008 and for the first, second, and third calendar  
19 quarters of fiscal year 2009, the FMAP (taking into ac-  
20 count the application of subsections (a) and (b)) shall be  
21 increased by 2.95 percentage points.

22 (d) INCREASE IN CAP ON MEDICAID PAYMENTS TO  
23 TERRITORIES.—Subject to subsections (f) and (g), with  
24 respect to the third and fourth calendar quarters of fiscal  
25 year 2008 and the first, second, and third calendar quar-

1   ters of fiscal year 2009, the amounts otherwise determined  
2   for Puerto Rico, the Virgin Islands, Guam, the Northern  
3   Mariana Islands, and American Samoa under subsections  
4   (f) and (g) of section 1108 of the Social Security Act (42  
5   U.S.C. 1308) shall each be increased by an amount equal  
6   to 5.90 percent of such amounts.

7       (e) SCOPE OF APPLICATION.—The increases in the  
8   FMAP for a State under this section shall apply only for  
9   purposes of title XIX of the Social Security Act and shall  
10   not apply with respect to—

11           (1) disproportionate share hospital payments  
12       described in section 1923 of such Act (42 U.S.C.  
13       1396r-4);

14           (2) payments under title IV or XXI of such Act  
15       (42 U.S.C. 601 et seq. and 1397aa et seq.); or

16           (3) any payments under XIX of such Act that  
17       are based on the enhanced FMAP described in sec-  
18       tion 2105(b) of such Act (42 U.S.C. 1397ee(b)).

19       (f) STATE ELIGIBILITY.—

20           (1) IN GENERAL.—Subject to paragraph (2), a  
21       State is eligible for an increase in its FMAP under  
22       subsection (e) or an increase in a cap amount under  
23       subsection (d) only if the eligibility under its State  
24       plan under title XIX of the Social Security Act (in-  
25       cluding any waiver under such title or under section

1       1115 of such Act (42 U.S.C. 1315)) is no more re-  
2       strictive than the eligibility under such plan (or  
3       waiver) as in effect on January 1, 2008.

4           (2) STATE REINSTATEMENT OF ELIGIBILITY  
5       PERMITTED.—A State that has restricted eligibility  
6       under its State plan under title XIX of the Social  
7       Security Act (including any waiver under such title  
8       or under section 1115 of such Act (42 U.S.C.  
9       1315)) after January 1, 2008, is eligible for an in-  
10      crease in its FMAP under subsection (c) or an in-  
11      crease in a cap amount under subsection (d) in the  
12      first calendar quarter (and subsequent calendar  
13      quarters) in which the State has reinstated eligibility  
14      that is no more restrictive than the eligibility under  
15      such plan (or waiver) as in effect on January 1,  
16      2008.

17          (3) RULE OF CONSTRUCTION.—Nothing in  
18      paragraph (1) or (2) shall be construed as affecting  
19      a State's flexibility with respect to benefits offered  
20      under the State medicaid program under title XIX  
21      of the Social Security Act (42 U.S.C. 1396 et seq.)  
22      (including any waiver under such title or under sec-  
23      tion 1115 of such Act (42 U.S.C. 1315)).

24          (g) REQUIREMENT FOR CERTAIN STATES.—In the  
25      case of a State that requires political subdivisions within

1 the State to contribute toward the non-Federal share of  
2 expenditures under the State medicaid plan required  
3 under section 1902(a)(2) of the Social Security Act (42  
4 U.S.C. 1396a(a)(2)), the State shall not require that such  
5 political subdivisions pay a greater percentage of the non-  
6 Federal share of such expenditures for the third and  
7 fourth calendar quarters of fiscal year 2008 and the first,  
8 second, and third calendar quarters of fiscal year 2009,  
9 than the percentage that would have been required by the  
10 State under such plan on March 31, 2008, prior to appli-  
11 cation of this section.

12 (h) DEFINITIONS.—In this section:

13 (1) FMAP.—The term “FMAP” means the  
14 Federal medical assistance percentage, as defined in  
15 section 1905(b) of the Social Security Act (42  
16 U.S.C. 1396d(b)).

17 (2) STATE.—The term “State” has the mean-  
18 ing given such term for purposes of title XIX of the  
19 Social Security Act (42 U.S.C. 1396 et seq.).

20 (3) REPEAL.—Effective as of October 1, 2009,  
21 this section is repealed.

1   **SEC. 2. ADJUSTMENT IN COMPUTATION OF MEDICAID**  
2                   **FMAP TO DISREGARD AN EXTRAORDINARY**  
3                   **EMPLOYER PENSION CONTRIBUTION.**

4       (a) IN GENERAL.—Only for purposes of computing  
5 the FMAP (as defined in subsection (e)) for a State for  
6 a fiscal year (beginning with fiscal year 2006) and apply-  
7 ing the FMAP under title XIX of the Social Security Act,  
8 any significantly disproportionate employer pension or in-  
9 surance fund contribution described in subsection (b) shall  
10 be disregarded in computing the per capita income of such  
11 State, but shall not be disregarded in computing the per  
12 capita income for the continental United States (and Alas-  
13 ka) and Hawaii.

14       (b) SIGNIFICANTLY DISPROPORTIONATE EMPLOYER  
15 PENSION AND INSURANCE FUND CONTRIBUTION.—

16       (1) IN GENERAL.—For purposes of this section,  
17 a significantly disproportionate employer pension  
18 and insurance fund contribution described in this  
19 subsection with respect to a State is any identifiable  
20 employer contribution towards pension or other em-  
21 ployee insurance funds that is estimated to accrue to  
22 residents of such State for a calendar year (begin-  
23 ning with calendar year 2003) if the increase in the  
24 amount so estimated exceeds 25 percent of the total  
25 increase in personal income in that State for the  
26 year involved.



1           (2) DATA TO BE USED.—For estimating and  
2       adjusting a FMAP already calculated as of the date  
3       of the enactment of this Act for a State with a sig-  
4       nificantly disproportionate employer pension and in-  
5       surance fund contribution, the Secretary of Health  
6       and Human Services shall use the personal income  
7       data set originally used in calculating such FMAP.

8           (3) SPECIAL ADJUSTMENT FOR NEGATIVE  
9       GROWTH.—If in any calendar year the total personal  
10      income growth in a State is negative, an employer  
11      pension and insurance fund contribution for the pur-  
12      poses of calculating the State's FMAP for a cal-  
13      endar year shall not exceed 125 percent of the  
14      amount of such contribution for the previous cal-  
15      endar year for the State.

16      (c) HOLD HARMLESS.—No State shall have its  
17      FMAP for a fiscal year reduced as a result of the applica-  
18      tion of this section.

19      (d) REPORT.—Not later than May 15, 2008, the Sec-  
20      retary of Health and Human Services shall submit to Con-  
21      gress a report on the problems presented by the current  
22      treatment of pension and insurance fund contributions in  
23      the use of Bureau of Economic Affairs calculations for the  
24      FMAP and for Medicaid and on possible alternative meth-  
25      odologies to mitigate such problems.



1 (e) FMAP DEFINED.—For purposes of this section,  
2 the term “FMAP” means the Federal medical assistance  
3 percentage, as defined in section 1905(b) of the Social Se-  
4 curity Act (42 U.S.C. 1396(d)).

